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REPORT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR GENOCIDE AND OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF RWANDA AND RWANDAN CITIZENS RESPONSIBLE FOR GENOCIDE AND OTHER SUCH VIOLATIONS COMMITTED IN THE TERRITORY OF NEIGHBOURING STATES BETWEEN 1 JANUARY AND 31 DECEMBER 1994

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and to the members of the Security Council the first annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, submitted by the President of the International Criminal Tribunal for Rwanda in accordance with article 32 of its statute (see Security Council resolution 955 (1994), annex), which states:

> "The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly."

ANNEX

First annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 covering the period from 8 November 1994 to 30 June 1996, adopted at the third plenary session of the Tribunal

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II. Letter dated 31 August 1995 from the Permanent Representative of the United Republic of Tanzania to the United Nations addressed to the United Nations Under-Secretary-General for Legal Affairs, the Legal Counsel 38

I. INTRODUCTION

1. Acting under Chapter VII of the Charter of the United Nations, the Security Council, by resolution 955 (1994) of 8 November 1994, (a) established an international criminal tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994 (the "Tribunal"); (b) adopted the statute of the Tribunal (the "statute"); and (c) requested the Secretary-General to make practical arrangements for the effective functioning of the Tribunal.

2. In a report to the Security Council dated 13 February 1995 (S/1995/134), the Secretary-General submitted proposals on the implementation of the decision to establish the Tribunal, including, in particular, possible locations for the seat of the Tribunal, in accordance with the criteria set out in paragraph 6 of resolution 955 (1994). 1/

3. By resolution 977 (1995) of 22 February 1995, the Security Council decided that, subject to the conclusion of appropriate arrangements between the United Nations and the Government of the United Republic of Tanzania, the Tribunal would have its seat at Arusha.

4. On 31 August 1995, the agreement between the United Nations and the United Republic of Tanzania concerning the headquarters of the International Tribunal for Rwanda was signed in New York (see annex).

5. In pursuance of the latter agreement, the Registrar of the Tribunal and the management of the Arusha International Conference Centre signed a lease on 31 October 1995 providing for the use by the Tribunal of the Centre's premises. The signing of the lease enabled the Tribunal to start functioning at its headquarters as from 27 November 1995 (the lease and annexes thereto may be consulted at the Registry of the Tribunal).

II. ORGANIZATION OF THE TRIBUNAL

6. Article 10 of the Statute provides that the Tribunal shall consist of (a) the Chambers, comprising two Trial Chambers and an Appeals Chamber; (b) the Prosecutor; and (c) the Registry.

A. The Chambers

7. In accordance with article 12 of the statute, nominations received by the Secretary-General for judges of the Trial Chambers of the Tribunal were forwarded to the President of the Security Council. On the basis of those nominations, the Council drew up a list of candidates in resolution 989 (1995) of 24 April 1995, which was officially transmitted to the President of the General Assembly by a letter dated 24 April 1995. On 24 and 25 May 1995, the

Assembly, by decision 49/324, elected six judges for a four-year term of office: Judges Lennart Aspegren, Laïty Kama, Tafazzal Hossain Khan, Yakov A. Ostrovsky, Navanethem Pillay and William Hussein Sekule.

8. Article 12, paragraph 2, of the statute provides that the members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (the "International Tribunal for the Former Yugoslavia") shall also serve as the members of the Appeals Chamber of the International Criminal Tribunal for Rwanda. The following judges serve as members of the Appeals Chamber:
Judges Antonio Cassese, Jules Deschênes, Adolphus Karibi-Whyte, Haopei Li and Ninian Stephen. 2/

B. The Prosecutor

9. In accordance with article 15 of the statute, the Prosecutor of the International Tribunal for the Former Yugoslavia also serves as the Prosecutor of the International Tribunal for Rwanda. Thus Judge Richard Goldstone serves as Prosecutor of the two international criminal tribunals.

1. Appointment of a Deputy Prosecutor

10. On 20 March 1995, Judge Honoré Rakotomanana was appointed Deputy Prosecutor by the Secretary-General of the United Nations on the recommendation of the Prosecutor, in accordance with article 15, paragraph 3, of the statute. From the time of his arrival in Kigali, Judge Rakotomanana has been engaged in recruiting personnel for the Office of the Prosecutor and establishing the operational structures and procedures necessary for the conduct of investigations and judicial proceedings.

11. Since the Prosecutor is based in The Hague, where he performs his dual functions, Judge Rakotomanana has the responsibility of overseeing the day-to-day business of the Kigali office.

2. Staffing of the Office of the Prosecutor

12. The selection and recruitment of staff for the Office of the Prosecutor has been a long and complex process. As of August 1996, nine months after the adoption of the Security Council resolution establishing the Tribunal, fewer than a dozen staff members were on board in Kigali.

13. In mid-November 1995, the Office of the Prosecutor had 52 staff members, drawn from 15 different countries, more than half of whom were on secondment. Most of the seconded staff members are from the Netherlands. Thanks to the generous contribution of this one State, which seconded 21 investigators in September 1995, the Office of the Prosecutor has had the minimum organizational resources it needs to be able to concentrate on its priority tasks.

3. Structure of the Office of the Prosecutor

14. The budget for the Tribunal for 1994-1995, as submitted to the Advisory Committee on Administrative and Budgetary Questions in July 1995, reflected initial staffing requirements of 114 posts. This number will increase to 175, including staff on secondment, when the final decisions on the objectives and strategy of the investigation have been taken.

15. Like its counterpart in the International Tribunal for the Former Yugoslavia, the Office of the Prosecutor comprises four main sections: the Investigations Section, the Prosecution Section, the Legal Services Section and the Administration and Records Section. Some of these sections are based in Kigali, while others, such as the Legal Services Section, are common to the two international criminal tribunals.

16. The largest of the four sections is the Investigations Section. It comprises experienced senior and junior investigators, lawyers, intelligence analysts, advisers, a scientific director, experts in forensic medicine, statisticians, demographers, interpreters and translators, and support staff. Organized into eight to ten multidisciplinary teams, the Investigations Section is responsible for conducting all investigations. In October 1995, a communal grave situated in Kibuye prefecture was studied by two members of the forensic medicine team. The tests carried out revealed the presence of human remains. Alongside these experiments, the team prepared a preliminary plotting of the distribution of the bones over the area of the site. In December 1995, a team of three persons from the non-governmental organization Physicians for Human Rights began to map the site and assemble photographic documentation. The information indicated on the map includes the topography of the site, the position of the skeletal remains, buildings, roads and other relevant data. This was the first investigation conducted in 1996 by the forensic medicine team comprising approximately 20 persons.

17. The second section is the Prosecution Section, which should have eight posts: three experienced senior lawyers, two or three legal advisers/researchers and support staff. The Prosecution Section will be responsible for the independent review of prosecution briefs prepared and submitted by the members of the Investigations Section, the finalization of indictments and the presentation of prosecutions before the judges of the Tribunal, in conjunction with the Prosecutor and the Deputy Prosecutor, assisted by legal officers of the Investigations Section.

18. The Special Advisory Section is the third component of the Office of the Prosecutor. It advises the Investigations and Prosecution Sections of the two international criminal tribunals. When it has its full complement of staff, the section will be made up of legal advisers who are specialists in the fields of international law, comparative law and criminal law, so as to make available a broad range of legal advice on specialized subjects. The guiding principle in the establishment of the section will be the need to harmonize the legal approaches of the two Prosecutor's offices, to avoid duplication and to carry out relevant legal research expeditiously.

19. The Administration and Records Section is responsible for the computer systems of the Office of the Prosecutor and the handling, processing and filing of all material, evidence, statements and other records received or generated by the Office of the Prosecutor.

20. The secretariat, common to the two international criminal tribunals, was established in The Hague with the aim of increasing the efficiency of the Prosecutor. The role of the secretariat, composed of four persons, is to advise the Prosecutor and the Deputy Prosecutors of the two tribunals on legal, political, administrative and organizational questions and in such specialized fields as gender-related crimes and relations with the media. Some members of the secretariat have gone on mission to Kigali in order to assist the Deputy Prosecutor and the Chief of the Investigations Section in implementing the strategy adopted by the Prosecutor.

21. Several legal advisers of the International Tribunal for the Former Yugoslavia have gone to Kigali to share their experience in investigations and prosecutions with the personnel of the Office of the Prosecutor in Kigali. In addition, the Prosecutor has decided that two legal advisers of the International Tribunal for the Former Yugoslavia will participate in the committee to review indictments in Kigali. Two legal advisers of the International Criminal Tribunal for Rwanda will participate in the committee to review indictments of the International Tribunal for the Former Yugoslavia.

22. The entire staff of the Office of the Prosecutor has participated in a seminar on the history and political institutions of Rwanda.

C. The Registrar

1. Appointment of the Registrar

23. On 8 September 1995, Mr. Andronico O. Adede was appointed Registrar of the Tribunal by the Secretary-General in accordance with article 16 of the statute and rule 30 of the rules of procedure and evidence.

2. Composition of the Registry

24. The Registry comprises a legal office, headed by the Deputy Registrar, and an administrative department, under the Chief of Administration.

25. As of 30 June 1996, the legal office was composed of the Deputy Registrar, two senior legal officers and a legal officer. The administrative department, under the Chief of Administration, comprises five sections: finance, communications, general services, electronic data processing, and press and information.

III. MAIN ACTIVITIES

26. The period covered by this report corresponds to the establishment of the Tribunal's material and legal infrastructure and to the commencement of its judicial activities. All three of the Tribunal's organs have played an active role in this development, each according to its competence and powers.

A. The Chambers

1. Regulatory activities

27. From 26 to 30 June 1995, the six judges of the Trial Chambers and the five judges of the Appeals Chamber held the Tribunal's first plenary session, at The Hague, because the Tribunal's premises in Arusha were not yet ready. Although the inaugural session took place that week, the judges were not regarded as having officially taken office until 19 June 1996, one year later. At the first plenary session, the judges adopted the rules of procedure and evidence of the Tribunal, in accordance with article 14 of the statute. Judges Kama and Ostrovsky were elected President and Vice-President of the Tribunal, respectively, for a two-year term, in accordance with article 13 of the statute. The composition of the two trial chambers was as follows: Judges Kama, Aspegren and Pillay made up the First Trial Chamber, and Judges Sekule, Khan and Ostrovsky served on the Second Trial Chamber. Judges Kama and Sekule were each elected president of their respective trial chamber.

28. From 8 to 12 January 1996, the judges met at the Tribunal's seat, in Arusha, for their second plenary session, at which they considered and adopted amendments to the rules of procedure and evidence, in the light of the practical problems encountered in implementing the rules. They also adopted two texts drawn up by the Registrar: the rules of detention and the directive for the assignment of defence counsel. In implementation of the rules of detention and with a view to ensuring observance of their provisions, the judges decided to appoint an independent authority to inspect conditions in the Tribunal's Detention Unit.

29. In accordance with rule 23 of the rules of procedure and evidence, the officers of the Chambers met from 13 to 15 March 1996. At the meeting in question, the judges decided to enter into an agreement with the International Committee of the Red Cross, which will thus become the independent authority responsible for inspecting detention conditions.

2. Judicial activities

30. Despite various difficulties encountered, and although the judges were not officially regarded as having taken office, they always endeavoured to initiate the Tribunal's judicial activities as swiftly as possible. Given the scale of the Tribunal's task and the need for swift action, they endeavoured to take up judicial proceedings as soon as possible. The judicial action taken by the Tribunal on 30 June 1996 included the confirmation of six indictments (or conduct of the pre-trial phase of the proceedings in respect of 14 individuals),

review of three requests for deferral to the Tribunal's competence, proceedings relating to the detention of suspects and the initial appearances of the accused in the framework of three trials.

(a) Indictments and arrest warrants

31. The first indictment reviewed by the Tribunal concerned 8 individuals suspected of having committed crimes allegedly perpetrated in Kibuye prefecture (see para. 44 below). This indictment was confirmed on 28 November 1995 by Judge Pillay. Two further indictments, each in respect of one individual, were then confirmed by Judge Sekule on 16 February 1996 (see para. 45 below). On 19 and 20 June 1996, Judge Khan confirmed three more indictments (see para. 46 below), thus making it possible to charge five further individuals.

32. As each indictment was confirmed, an arrest warrant was issued against the accused person or persons, and transmitted by the Registrar to the competent State authorities.

(b) Requests for deferral

33. The Tribunal held its first public hearing on 11 January 1996, when the Second Trial Chamber, presided over by Judge Sekule and composed of Judges Khan and Ostrovsky, reviewed a deferral request filed by the Prosecutor. The request concerned the investigations and proceedings instituted by the Belgian courts in respect of Mr. Elie Ndayambaje, Mr. Joseph Kanyabashi and Mr. Alphonse Higaniro, all three of whom had been detained by the Belgian authorities. The Second Trial Chamber approved the Prosecutor's request and asked the Belgian authorities to defer to the Tribunal's competence.

34. On 12 March 1996, the First Trial Chamber, presided over by Judge Kama and composed of Judges Aspegren and Pillay, considered and approved two deferral requests filed by the Prosecutor. The first request concerned the investigations taken up by the Belgian courts in respect of officials of Radio Télévision Libre des Mille Collines SARL. In the second request the Swiss authorities were asked to defer to the Tribunal's competence the investigations and proceedings instituted in respect of Mr. Alfred Musema, a Rwandese national detained by the Swiss authorities.

(c) Provisional detention of suspects

35. The difficulties encountered by the Prosecutor in conducting his investigations prompted him to suggest to the Tribunal that it should amend the rules of procedure and evidence in order to provide for the detention of suspects on remand and their transfer to the Tribunal's Detention Unit in Arusha. A new rule 40 bis was consequently adopted by the judges on 15 May 1996 in order to meet investigation requirements. Under rule 40 bis of the rules of procedure and evidence, a judge may order the provisional detention of a suspect and his or her transfer to the Detention Unit, in situations where the suspect has already been arrested provisionally or otherwise detained and where the judge considers that there is a reliable and consistent body of material that tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction and the judge also considers provisional detention to

be necessary to prevent the escape of the suspect, injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation.

36. On 17 May 1996, Judge Aspegren rendered four decisions following consideration of four requests filed by the Prosecutor under rule 40 bis. In response to the requests, Judge Aspegren ordered provisional detention for a period of 30 days and the transfer of four suspects imprisoned by the Cameroonian authorities: Mr. Théoneste Bagosora, Mr. Ferdinand Nahimana, Mr. Anatole Nsengiyumva and Mr. André Ntagerura.

37. On 18 June 1996, following an inter partes hearing involving the Prosecutor and the four above-mentioned suspects, who were assisted by their counsel, Judge Aspegren rendered four more decisions, extending provisional detention of the four suspects for a period not exceeding 30 days, until 16 July 1996, so as to enable the Prosecutor to prepare indictments.

(d) Initial appearances

38. On 30 and 31 May 1996, three accused persons appeared for the first time before the Tribunal, in accordance with the procedure laid down in rule 62 of the rules of procedure and evidence. This was a particularly important event because for the first time an international criminal tribunal was sitting in Africa.

39. On 30 May 1996, Mr. Georges Anderson Rutaganda and Mr. Jean-Paul Akayesu appeared before the First Trial Chamber, presided over by Judge Kama and composed of Judges Aspegren and Pillay. They were represented by counsel assigned to them by the Tribunal, Mr. Temmerman and Mr. Scheers, respectively. On 31 May 1996, Mr. Clément Kayishema, charged in connection with the first indictment (Kibuye), appeared before the First Trial Chamber, presided over by Judge Kama and composed of Judges Aspegren and Ostrovsky. He was represented by Mr. Ferran, counsel assigned by the Tribunal.

B. The Office of the Prosecutor

40. In its first year of existence, the Tribunal devoted itself to establishing a functional office in Kigali. Most of 1995 was devoted to the following activities: establishing cooperation with the Rwandese Government and with other Governments; establishing relations with United Nations bodies and specialized agencies and with non-governmental organizations; selecting and recruiting qualified staff; developing a strategy for investigations and prosecutions; establishing and furnishing an office in Kigali; drawing up a budget; establishing an organizational structure; establishing operational procedures and setting up office automation equipment. However, due to the numerous and sizeable obstacles which delayed the establishment of the Tribunal, many of these tasks were not completed. The Office of the Prosecutor, like the Tribunal as a whole, spent its first year of existence establishing itself.

41. It is important to note some of the obstacles which hindered the establishment of the Office of the Prosecutor in 1995. First, the necessary

administrative infrastructure was not immediately available due to the delay in appointing the Registrar; he was not appointed until 8 September 1995. Thus the Office of the Prosecutor was unable to concentrate on its first mission. Next, the precariousness of the Tribunal's financial situation, within the overall context of the financial crisis of the United Nations, seriously jeopardized the start of the activities of the Office of the Prosecutor.

1. Strategy of the Office of the Prosecutor

42. Ever since the Tribunal was established the Prosecutor has made it clear that his strategy would be patterned on that of the Office of the Prosecutor for the International Tribunal for the Former Yugoslavia, and would give priority to investigating and prosecuting individuals who had held important responsibilities in the events which occurred in Rwanda in 1994. Given the limited financial and human resources available to it, the Office of the Prosecutor had no choice but to concentrate its efforts on individuals who had been in positions of responsibility.

43. The Prosecutor recognizes the importance of establishing a basis for his operations in Kigali. However, the preliminary indications available to him seem to suggest that approximately half of the investigations will require investigators to travel outside Rwanda.

2. Action by the Office of the Prosecutor

(a) Indictments and arrest warrants

44. On 22 November 1995, the Prosecutor submitted his first indictment, known as the Kibuye case against Mr. Clément Kayishema, Mr. Charles Sikubwabo, Mr. Aloys Ndimbati, Mr. Ignace Bagilishema, Mr. Vincent Rutaganira, Mr. Muhimana Mika, Mr. Obed Ruzindana and Ryandikayo. The indictment was confirmed on 28 November 1995 by Judge Pillay, who also issued warrants for the arrest of each of the accused. The latter are charged with participating in the massacres that took place in the summer of 1994 in Kibuye prefecture. The indictment draws up a list of the violations for each of the four massacre sites mentioned: genocide, crimes against humanity and violations of article 3 common to the Geneva Conventions of 1949.

45. On 16 February 1996, Judge Sekule reviewed the second indictment submitted by the Prosecutor in the case concerning Mr. Jean-Paul Akayesu, former burgomaster of Taba district, Gitarama prefecture. The third indictment, which was also confirmed on 16 February 1996 by Judge Sekule, charges Mr. Georges Anderson Rutaganda with participating in the massacres committed in April 1994 in Kigali and Gitarama prefectures. The violations indicated in the indictment are genocide, crimes against humanity and serious violations of the Geneva Conventions of 1949.

46. On 17 June 1996, the Prosecutor submitted two indictments, both of which were subsequently confirmed by Judge Khan. The first, involving Mr. Elie Ndayambaje, deals with mass killings in the Kabuje and Gisagara

districts, Kibuye prefecture. The second relates to a massacre site in Kibuye prefecture and concerns four individuals: Mr. Elizaphan Ntakirutimana, Mr. Gérard Ntakirutimana, Mr. Obed Ruzindana and Mr. Charles Sikubwabo.

47. The Office of the Prosecutor also submitted an indictment against Mr. Ladislas Ntaganzwa, for genocide, crimes against humanity and serious violations of the Geneva Conventions of 1949, for massacres that occurred in Nyakizu district, Butare prefecture.

(b) Requests for deferral

48. In January 1996, the Prosecutor submitted a first formal request for the Belgian courts to defer to the Tribunal in the cases relating to Mr. Elie Ndayambaye, Mr. Joseph Kanyabashi and Mr. Alphonse Higaniro. On 11 January 1996, the Second Trial Chamber decided to formally request the Belgian courts to defer to the competence of the Tribunal. The Belgian Government, after adapting its national legislation to enable it to grant such a request, acceded to the Tribunal's request.

49. A second request to that effect was submitted in March 1996 in the context of the case involving Mr. Alfred Musema. Two other similar requests were presented by the Prosecutor on 17 May 1996, one relating to Mr. Théoneste Bagasora and the other to Radio Télévision Libre des Mille Collines SARL. The Trial Chamber complied with all such requests submitted by the Office of the Prosecutor.

(c) Provisional detention of suspects

50. Further to the Prosecutor's request and in accordance with article 40 bis of the rules of procedure and evidence, on 17 May 1996 Judge Aspegren rendered four decisions ordering the provisional detention for 30 days of Mr. Théoneste Bagosora, Mr. André Ntagerura, Mr. Ferdinand Nahimana and Mr. Anatole Nsengiyumva, all of whom were being held by the Cameroonian authorities. Following an inter partes hearing on 18 June 1996, and having heard the Prosecutor and the suspects, assisted by their respective counsels, Judge Aspegren decided to extend the detention of the four above-mentioned suspects for a second period not exceeding 30 days.

3. The need for support and cooperation from the international community

(a) Official visits by the Prosecutor to Rwanda and neighbouring countries

51. Following the adoption of Security Council resolution 955 (1994) the Prosecutor's first action was to go to Kigali on 19 and 20 December 1994 to establish cooperation with the Rwandese authorities, with the United Nations Assistance Mission in Rwanda (UNAMIR) and with other United Nations agencies. During this visit, the Prosecutor had occasion to meet with the President of the Republic and with members of the Rwandese Government, including the Prime

Minister, several ministers and the Attorney-General. The Prosecutor also met with the Special Representative of the Secretary-General for Rwanda, Mr. Shaharyar Khan, and with other representatives of UNAMIR and United Nations agencies represented in Rwandese territory. During 1995, the Prosecutor paid many further visits to Rwanda, thereby strengthening the cooperation existing between the Rwandese Government and the Tribunal.

52. Particularly conscious of the importance of cooperation between the Tribunal and States Members of the United Nations, and more particularly with States neighbouring Rwanda and having large numbers of refugees in their territory, the Prosecutor and Deputy Prosecutor travelled extensively in 1995 in order to meet with official representatives of the Zambian, Zairian, Kenyan, Tanzanian, and South African Governments. They also met with Salim Ahmed Salim, Secretary-General of the Organization of African Unity. In May 1996, the Prosecutor met in The Hague with a representative of the Office of the United Nations High Commissioner for Refugees, in order to determine the modalities of cooperation between the two agencies. During each mission, the Prosecutor received assurances of full cooperation from the States and organizations he met with.

53. Strengthening the initial contact of the Prosecutor with the Rwandese Government, the Deputy Prosecutor met regularly with members of the Government, representatives of UNAMIR and other organizations established in Kigali and with the ambassadors of certain States Members of the United Nations represented in Kigali. The Deputy Prosecutor also met the Vice Chancellor and the Minister for Foreign Affairs of Germany as well as the President of Ireland. They each pledged to cooperate fully with the Office of the Prosecutor.

54. In the course of the year, the Prosecutor participated in various meetings in Europe and in North America, at which he was able to meet with representatives of States Members of the United Nations and with representatives of international and non-governmental organizations in an effort to enlist and strengthen their support and cooperation.

(b) Appeal of 3 May 1995 for the cooperation and support of all Governments

55. On 3 May 1995, the Prosecutor sent all Governments a letter concerning their cooperation with the Tribunal. Recalling the terms of Security Council resolution 955 (1994), this appeal calls on Governments to provide active assistance in the following areas: (1) recruitment of candidates for positions as investigators and interpreters; (2) secondment of personnel; (3) recruitment of liaison officers; (4) provision of information on the situation of refugees; (5) provision of information concerning war crimes.

(c) Meeting in Kigali of the operational group on assistance to Rwanda

56. Realizing that it had taken a long time to set up the Tribunal, and convinced that visible and significant actions were needed in order to demonstrate to the Rwandese population that the international community was determined to establish the Tribunal, on 19 May 1995 the Prosecutor convened a special meeting of the operational group on assistance to Rwanda, in Kigali. The purpose of the meeting was to bring the Tribunal's financial situation to

the attention of members of the Group and to call upon them for assistance in that area. The representatives of more than 20 States and organizations which participated in that meeting pledged more than $7 million in financial assistance.

4. Conclusion

57. Despite numerous obstacles, the Office of the Prosecutor made substantial progress in 1995. Thanks to the generosity of one Member State, a database containing more than 5,500 documents relating to the investigations was established in the Office of the Prosecutor in Kigali. One international organization pledged to make a sizeable donation in bibliographical resources and in video-conference equipment. That organization also intends to support the important work relating to forensic medicine which is being carried out jointly with the Investigations Section of the Office of the Prosecutor. Several non-governmental organizations and Member States have contributed to the financing of essential needs relating, inter alia, to data-processing equipment, communications equipment and external expertise. In October 1995, donations to the voluntary trust fund amounted to more than $6 million. Five Member States have made 31 people available to the Office of the Prosecutor.

58. The Office of the Prosecutor submitted its first indictment on 22 November 1995; this was made possible thanks to the generous support of the international community through various forms of contributions by Member States, international organizations and non-governmental organizations. These donations are evidence of the international community's active support for the Tribunal's mission.

59. The activities of the Office of the Prosecutor are, however, only just beginning. It still faces numerous challenges, such as improving means of communication between the various services of the Office and strengthening cooperation with States and, more especially, with Rwanda's neighbours in order to facilitate the smooth progress of investigations and prosecutions.

60. The above-mentioned challenges are but a few of those that still await the Office of the Prosecutor. Because the mission that he has yet to accomplish swiftly is a particularly important one, the Prosecutor is convinced that it is essential for the international community to continue and strengthen its support for the Tribunal.

C. The Registry

61. The Registry of the Tribunal performs not only the legal functions traditionally assigned to the registry of a conventional national court, but also those mentioned in rule 33 of the rules of procedure and evidence, which states: "Under the authority of the President, he [the Registrar] shall be responsible for the administration and servicing of the Tribunal and shall serve as its channel of communication".

1. Legal activities

62. The Registry performs various kinds of legal activities. It is responsible for the day-to-day management of the judicial activities of the Tribunal in accordance with the rules of procedure and evidence. It is also responsible for establishing and managing a number of services at the disposal of the Tribunal, including the Detention Unit and the Victims and Witnesses Unit.

(a) Day-to-day management of judicial activities

63. The day-to-day management of the judicial activities of the Tribunal is entrusted to the Registry, which among other things, prepares certain legal documents, ensures the proper functioning of the hearings, manages the Detention Unit, and is responsible for the official transmission of arrest warrants and other documents pertaining to the judicial files and for follow-up with regard to these files.

(i) Material organization of proceedings and hearings

64. The Registry is responsible for the judicial infrastructure and the material organization of the trials. The construction of courtrooms, the material aspects of which are dealt with below, has required much preparation and special attention on the part of both the legal office and the administrative department. The international context in which the Tribunal is working imposes special constraints, for example the problems relating to security and to interpretation and translation.

(ii) Preparation of legal documents

65. The Registry has drafted a number of legal documents necessary for the Tribunal's judicial work, namely the directive on assignment of defence counsel, the rules for the detention of persons pending trial or appeal before the Tribunal or detained on the orders of the Tribunal, the agreement with the International Committee of the Red Cross designating it as the independent authority responsible for inspecting detention conditions, the disciplinary rules of the Detention Unit, the directive on the detainees' entitlements regarding communication and visits, and the directive on witness protection.

(iii) Implementation of the directive on assignment of defence counsel

66. The directive on assignment of defence counsel, adopted by the judges, provides that the Registrar shall be responsible for its implementation. The Registry has accordingly drawn up the official list of lawyers available for assignment envisaged in rule 45 of the rules of procedure and evidence. It has also set up the Advisory Panel and determined the remuneration to be paid to assigned counsel, as provided in the directive on assignment of defence counsel. Moreover, pursuant to official requests by suspects or accused, Registry lawyers have investigated their financial situation and made recommendations to the Registrar as to whether counsel should be assigned to them.

(iv) Transmission of arrest warrants and other judicial documents

67. The arrest warrants issued by a judge after the indictments have been confirmed are officially transmitted by the Registrar to the authorities of the countries in which, according to the Prosecutor, the accused are present. The Registrar is also responsible for transmitting any other document issued by a judge or a Chamber, such as a deferral request or an order as provided for in article 40 bis. The transmission of these official documents and conducting follow-up with regard to the files so as to ensure that the Tribunal's decisions are implemented have sometimes proved to be particularly delicate and difficult tasks, requiring much time and attention on the part of Registry personnel.

(b) The Detention Unit

68. In agreement with the Government of the United Republic of Tanzania, the Detention Unit of the Tribunal has been established within the enclosure of the Arusha prison, from which it is nevertheless completely distinct. About 50 cells will be built; 12 have already been completed.

69. On 26 May 1996, three accused were transferred to the Detention Unit of the Tribunal. Their transfer from Lusaka to Arusha, in conditions ensuring both high security and respect for their rights, required much preparation by the Registry, in cooperation with the authorities of Zambia and Tanzania. As soon as the accused arrived in the Detention Unit, they were taken charge of, registered by the prison authorities, assigned individual cells and given a complete medical examination.

(c) The Witnesses Unit

70. The rules of procedure and evidence provide for the establishment of a victims and witnesses unit responsible for recommending protective measures and for assisting victims and witnesses. The Unit, which was established on 24 June 1996, forms an integral part of the Registry. It will assist both prosecution and defence witnesses impartially and in the greatest confidentiality and will provide them with both physical and psychological protection.

2. Administration

71. As soon as he took up his duties on 8 September 1995, the Registrar assumed responsibility for the administrative activities necessary for the functioning of the Tribunal. Among other things, he negotiated and concluded a lease with the Government of Tanzania. He procured the equipment necessary for the preparation of the premises rented in Arusha, with a view to the installation of the staff and the conducting of the judicial proceedings. He also arranged for the construction of other premises necessary for the functioning of the Tribunal. Lastly, he proceeded to recruit the Tribunal staff. 3/ These activities have, however, been somewhat delayed by the restrictions imposed on the use of financial resources. Indeed, it was not until 20 October 1995 that the Registrar received from the Under-Secretary-General for Administration and Management a communication indicating that the Tribunal would be given a general

exemption from the special measures introduced on 19 September 1995 because of the financial crisis. After the adoption of the 1996 budget, in June 1996, staff recruitment was stepped up so as to enable the Tribunal to fill all the posts provided for in the budget and thus have at its disposal the staff necessary for carrying out its mandate.

72. In accordance with the provisions of the lease between the Tribunal and the Arusha International Conference Centre (AICC), the Registrar has initiated the process that will enable the Tribunal to move into its premises in two stages: in the first stage, the Registry and the Chambers have been temporarily installed since November 1995 in an area of the Centre called Simba Hall. In the second stage, a wing of the Centre known as block B will be refitted and the Registry and the Chambers will be installed there on a permanent basis.

73. The Registrar has given priority to the construction of two courtrooms and offices for the staff of the Chambers and the Registry. The work on block B (fitting out of a courtroom and offices for the Chambers) is scheduled for completion in July 1996. The rest of the work (second courtroom and offices of the Registry) should be completed in November 1996. When the Registry and the Chambers have moved to their permanent quarters in block B, Simba Hall will be used exclusively by the Office of the Prosecutor.

3. Information activities

74. The press and information section, consisting of one officer and a professional journalist, is responsible for establishing and maintaining contacts with the media and organizing media coverage of the proceedings and all other events occurring in the Tribunal, and serves as liaison between the Tribunal and any entity requesting documentation (researchers, non-governmental organizations, etc.).

IV. CONCLUSION

75. Since its establishment the Tribunal has sought, despite the difficulties encountered, to carry out the mandate given it by the Security Council. The Tribunal concentrated first on the establishment of the legal and material structure necessary for the proper progress of the judicial activities and the commencement of the trials. This first preparatory stage is now coming to an end. Moreover, the Tribunal has already become operational, since its judicial activities have already begun. It has already indicted 14 suspects and held deferral hearings, and three accused have made initial appearances before it. The trials relating to these three initial appearances should begin in the autumn of 1996. Lastly, many new indictments are being prepared, which should make it possible to charge a number of people who allegedly played a prominent role in the genocide in Rwanda.

76. In carrying out its mandate, the Tribunal has been supported by the United Nations and assisted by a number of States. It must be emphasized, however, that the cooperation of States plays an important role in regard to the Tribunal's work. In fact, at each stage of the judicial proceedings such

cooperation is a prerequisite if the Tribunal is to conduct its work effectively. Cooperation and judicial assistance are provided for in article 28 of the statute, which stipulates that States shall comply without undue delay with any request for assistance or an order issued by the Tribunal. The statute, which is annexed to a Security Council resolution, is binding by virtue of the powers conferred on the Security Council by the Charter of the United Nations. The President and the Prosecutor have sought to make States aware of their obligations and have asked them to enact implementing legislation enabling them to cooperate fully with the Tribunal. The President has also taken the initiative of contacting the Secretary-General of the Organization of African Unity, Mr. Salim Ahmed Salim, and asking him to transmit the appeal of the Tribunal to all African States, requesting them to comply with the obligation to cooperate established by the Security Council in the statute. The President has also drafted a letter having a similar content which will shortly be addressed to the Governments of all States Members of the United Nations.

77. Although the Tribunal has made great progress during its first year of existence, it still faces many challenges. The Office of the Prosecutor needs greater human and material resources if it is to continue and speed up its work. Between now and the beginning of the first trials, scheduled for the autumn, a great deal of material and legal preparatory work remains to be done: for example, the construction work must be finished, transport organized and arrangements made for the accommodation of victims and witnesses. If the Tribunal is to cope with such problems it must be given sufficient means and receive the support of the international community.

Notes

1/ In his report S/1995/134, dated 13 February 1995, submitted pursuant to paragraph 5 of resolution 955 (1994), the Secretary-General provided a comprehensive analysis of the legal basis for the establishment of the International Criminal Tribunal for Rwanda, the main provisions of the statute of the Tribunal and other matters relating to the Tribunal's establishment and effective functioning. For the subsequent reports submitted by the Secretary-General pursuant to paragraph 5 of resolution 955 (1994), see S/1995/533, dated 30 June 1995, and S/1995/741, dated 25 August 1995.

2/ At the second plenary session, Judge Georges Abi-Saab served as a member of the Appeals Chamber. He has since resigned and been replaced as a member of the Appeals Chamber by Judge Adolphus Karibi-Whyte.

3/ For details concerning the financing of the International Tribunal for Rwanda, see document A/C.5/49/68 of 29 June 1995.

APPENDIX

Agreement between the United Nations and the United Republic of Tanzania concerning the headquarters of the International Tribunal for Rwanda

[Original: English]

Whereas the Security Council of the United Nations acting under Chapter VII of the Charter of the United Nations inter alia decided, by its resolution 955 (1994) of 8 November 1994, "to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994";

Whereas the International Tribunal for Rwanda is established as a subsidiary organ within the terms of Article 29 of the Charter of the United Nations;

Whereas the Security Council, by its resolution 977 (1995) of 22 February 1995 decided that "subject to the conclusion of appropriate arrangements between the United Nations and the Government of the United Republic of Tanzania, the International Tribunal for Rwanda shall have its seat at Arusha";

Whereas the United Nations and the United Republic of Tanzania wish to conclude an Agreement regulating matters arising from the establishment and necessary for the proper functioning of the International Tribunal for Rwanda in the United Republic of Tanzania;

The United Nations and the United Republic of Tanzania have agreed as follows:

Article I

Definitions

For the purpose of the present Agreement, the following definitions shall apply:

(a) "the Tribunal" means the International Tribunal for Rwanda established by the Security Council pursuant to its resolution 955 (1994);

(b) "the premises of the Tribunal" means buildings, parts of buildings and areas, including installations and facilities made available to, maintained, occupied or used by the Tribunal in the host country in connection with its functions and purposes;

(c) "the host country" means the United Republic of Tanzania;

(d) "the Government" means the Government of the United Republic of Tanzania;

(e) "the United Nations" means the United Nations, an international governmental organization established under the Charter of the United Nations;

(f) "the Security Council" means the Security Council of the United Nations;

(g) "the Secretary-General" means the Secretary-General of the United Nations;

(h) "the competent authorities" means national, regional, municipal and other competent authorities under the law of the host country;

(i) "the Statute" means the Statute of the Tribunal adopted by the Security Council by its resolution 955 (1994);

(j) "the Judges" means the Judges of the Tribunal as referred to in article 12 of the Statute;

(k) "the President" means the President of the Tribunal as referred to in article 13 of the Statute;

(l) "the Prosecutor" means the Prosecutor of the Tribunal as referred to in article 15 of the Statute;

(m) "the Registrar" means the Registrar of the Tribunal as appointed by the Secretary-General pursuant to article 16 of the Statute;

(n) "the staff of the Tribunal" means the staff of the Office of the Prosecutor as referred to in paragraph 3 of article 15 of the Statute and the staff of the Registry as referred to in paragraph 4 of article 16 of the Statute;

(o) "persons performing missions for the Tribunal" means persons performing certain missions for the Tribunal in the investigation or prosecution or in the judicial or appellate proceedings;

(p) "the witnesses" means persons referred to as such in the Statute;

(q) "experts" means persons called at the instance of the Tribunal, the Prosecutor, the suspect or the accused to present testimony based on special knowledge, skills, experience or training;

(r) "counsel" means a person referred to as such in the Statute;

(s) "the suspect" means a person referred to as such in the Statute;

(t) "the accused" means a person referred to as such in the Statute;

(u) "the General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the United Republic of Tanzania acceded on 29 October 1962;

(v) "the Vienna Convention" means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961, to which the United Republic of Tanzania acceded on 5 November 1962;

(w) "the regulations" means the regulations adopted by the Tribunal pursuant to this Agreement;

(x) "Rules of Procedure and Evidence" means the rules of procedure and evidence adopted by the judges in accordance with article 14 of the Statute.

Article II

Purpose and scope of the agreement

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Tribunal in the United Republic of Tanzania.

Article III

Juridical personality of the tribunal

1. The Tribunal shall possess in the host country full juridical personality. This shall, in particular, include the capacity:

(a) To contract;

(b) To acquire and dispose of movable and immovable property;

(c) To institute legal proceedings.

2. For the purpose of this article the Tribunal shall be represented by the Registrar.

Article IV

Application of the General and Vienna Conventions

The General Convention and the Vienna Convention shall be applicable mutatis mutandis to the Tribunal, its property, funds and assets, to the premises of the Tribunal, to the Judges, the Prosecutor and the Registrar, the staff of the Tribunal and persons performing missions for the Tribunal.

Article V

Inviolability of the premises of the Tribunal

1. The premises of the Tribunal shall be inviolable. The competent authorities shall take whatever action may be necessary to ensure that the Tribunal shall not be dispossessed of all or any part of the premises of the Tribunal without the express consent of the Tribunal. The property, funds and assets of the Tribunal, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

2. The competent authorities shall not enter the premises of the Tribunal to perform an official duty, except with the express consent, or at the request of, the Registrar or any official designated by him. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises of the Tribunal except with the consent of and in accordance with conditions approved by the Registrar.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur on the premises of the Tribunal, the consent of the Registrar, or an official designated by him, to any necessary entry into the premises of the Tribunal shall be presumed if neither of them can be reached in time.

4. Subject to paragraph 1, 2 and 3 above, the competent authorities shall take the necessary action to protect the premises of the Tribunal against fire or other emergency.

5. The Tribunal may expel or exclude persons from the premises of the Tribunal for violation of its regulations.

Article VI

Law and authority on the premises of the Tribunal

1. The premises of the Tribunal shall be under the control and authority of the Tribunal, as provided in this Agreement.

2. Except as otherwise provided in this Agreement or in the General Convention, the laws and regulations of the host country shall apply within the premises of the Tribunal.

3. The Tribunal shall have the power to make regulations operative on the premises of the Tribunal for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Tribunal shall promptly inform the competent authorities of regulations thus enacted in accordance with this paragraph. No law or regulation of the host country which

is inconsistent with a regulation of the Tribunal shall, to the extent of such inconsistency, be applicable within the premises of the Tribunal.

4. Any dispute between the Tribunal and the host country, as to whether a regulation of the Tribunal is authorized by this article, or as to whether a law or regulation of the host country is inconsistent with any regulation of the Tribunal authorized by this article, shall be promptly settled by the procedure set out in article XXIX, paragraph 2, of this Agreement. Pending such settlement, the regulation of the Tribunal shall apply and the law or regulation of the host country shall be inapplicable within the premises of the Tribunal to the extent that the Tribunal claims it to be inconsistent with its regulation.

Article VII

Protection of the premises of the Tribunal and their vicinity

1. The competent authorities shall exercise due diligence to ensure the security and protection of the Tribunal and to ensure that the tranquillity of the Tribunal is not disturbed by the intrusion of persons or groups of persons from outside the premises of the Tribunal or by disturbances in their immediate vicinity and shall provide to the premises of the Tribunal the appropriate protection as may be required.

2. If so requested by the President or the Registrar of the Tribunal, the competent authorities shall provide adequate police force necessary for the preservation of law and order on the premises of the Tribunal or in the immediate vicinity thereof, and for the removal of persons therefrom.

Article VIII

Funds, assets and other property

1. The Tribunal, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Tribunal has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. Without being restricted by financial controls, regulations or moratoriums of any kind, the Tribunal:

(a) May hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;

(b) Shall be free to transfer its funds, gold or currency from one country to another, or within the host country, to the United Nations or any other agency.

Article IX

Inviolability of archives and all documents of the Tribunal

The archives of the Tribunal, and in general all documents and materials made available, belonging to or used by it, wherever located in the host country and by whomsoever held, shall be inviolable.

Article X

Exemption from taxes and duties

1. The Tribunal, its assets, income and other property shall be exempt from all direct taxes levied by State and other regional or local authorities or otherwise. It is understood, however, that the Tribunal shall not claim exemption from taxes and duties which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

2. While the Tribunal will not generally claim exemption from indirect taxes which constitute part of the cost of goods purchased by or services rendered to the Tribunal, including rentals, nevertheless when the Tribunal is making important purchases for official use on which such taxes or duties have been charged or are chargeable, the Government shall make appropriate administrative arrangements for the remission or refund of such taxes or duties.

3. The Tribunal, its funds, assets and other property shall be exempt from all customs duties in respect of articles imported or exported by the Tribunal for its official use, including motor vehicles. The Tribunal shall also be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications. Assets and other property for which an exemption from customs duties has been obtained shall not be sold within the United Republic of Tanzania except in accordance with conditions agreed to with the Government.

Article XI

Communications facilities

1. The Tribunal shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of the Tribunal shall be subject to censorship by the Government. Such immunity from censorship shall extend to printed matter, photographic and electronic data communications, and

other forms of communications as may be used by the Tribunal. The Tribunal shall be entitled to use codes and to dispatch and receive correspondence and other material or communications either by courier or in sealed bags, all of which shall be inviolable and shall have the same privileges and immunities as diplomatic couriers and bags.

3. The Tribunal shall have the right to operate radio and other telecommunications equipment on United Nations registered frequencies and those allocated to it by the Government, between the Tribunal offices, installations, facilities and means of transport, within and outside the host country, and in particular with the International Tribunal for the former Yugoslavia, the Investigative/Prosecutorial Unit in Kigali and United Nations Headquarters in New York.

4. For the fulfilment of its purposes, the Tribunal shall have the right to publish freely and without restrictions within the host country in conformity with this Agreement.

Article XII

Public services for the premises of the Tribunal

1. The competent authorities shall secure, on fair conditions and upon the request of the Registrar or on his behalf, the public services needed by the Tribunal such as, but not limited to, postal, telephone and telegraphic services, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets.

2. In cases where electricity, water, gas or other services referred to in paragraph 1 above are made available to the Tribunal by the competent authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to diplomatic missions or other international organizations.

3. In case of force majeure resulting in a complete or partial disruption of the aforementioned services, the Tribunal shall for the performance of its functions be accorded the priority given to essential agencies and organs of the Government.

4. Upon request of the competent authorities, the Registrar, or an official designated by him, shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises of the Tribunal under conditions which shall not unreasonably disturb the carrying out of the functions of the Tribunal. Underground constructions may be undertaken by the competent authorities on the premises of the Tribunal only after consultation with the Registrar, or an official designated by him, and under conditions which shall not disturb the carrying out of the functions of the Tribunal.

Article XIII

Flag, emblem and markings

The Tribunal shall be entitled to display its flag, emblem and markings on the premises of the Tribunal, and to display its flag on vehicles used for official purposes.

Article XIV

Privileges and immunities of the Judges, the Prosecutor and the Registrar

1. The Judges, the Prosecutor and the Registrar shall, together with members of their families forming part of their household and who do not have the nationality of the United Republic of Tanzania, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents, in accordance with international law and in particular under the General Convention and the Vienna Convention. They shall inter alia enjoy:

(a) Personal inviolability, including immunity from arrest or detention;

(b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;

(c) Inviolability for all papers and documents;

(d) Exemption from immigration restrictions, alien registration or national service obligations;

(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

2. In the event the Tribunal operates a system for the payments of pensions and annuities to former Judges, Prosecutors and Registrars and their dependants, exemption from income tax in the host country shall not apply to such pensions and annuities.

3. Privileges and immunities are accorded to the Judges, the Prosecutor and the Registrar in the interest of the Tribunal and not for the personal benefit of individuals themselves. The right and the duty to waive the immunity in any case where it can be waived without prejudice to the purpose for which it is accorded shall lie, as concerns the Judges, with the Tribunal in accordance with its rules; as concerns the Prosecutor and the Registrar, with the Secretary-General in consultation with the President.

Article XV

Privileges and immunities of the staff of the Tribunal

1. The staff of the Tribunal shall be accorded the privileges and immunities as provided for in articles V and VII of the General Convention. They shall, inter alia:

(a) Enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Tribunal;

(b) Enjoy exemption from taxation on the salaries and emoluments paid to them by the Tribunal;

(c) Enjoy immunity from national service obligations;

(d) Enjoy immunity, together with members of their families forming part of their household, from immigration restrictions and alien registration;

(e) Be accorded the same privileges in respect of exchange facilities as are accorded to the members of comparable rank of the diplomatic missions established in the host country;

(f) Be given, together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as diplomatic agents;

(g) Have the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host country.

2. Internationally recruited staff of P-4 level and above who do not have the nationality of the United Republic of Tanzania shall, together with members of their families forming part of their household who do not have the nationality of the United Republic of Tanzania, be accorded the privileges, immunities and facilities as are accorded to members of comparable rank of the diplomatic staff of missions accredited to the Government.

3. Internationally recruited staff who do not have Tanzanian nationality shall also be entitled to the following additional facilities:

(a) To import free of customs and excise duties limited quantities of certain articles intended for personal consumption in accordance with existing regulations of the host country;

(b) To import a motor vehicle free of customs and excise duties, including value-added tax, if applicable, in accordance with existing regulations of the host country applicable to members of diplomatic missions of comparable ranks;

(c) To export with relief from duties and taxes, on the termination of their function in the United Republic of Tanzania, their furniture and personal effects, including motor vehicles;

(d) They may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

4. The privileges and immunities are granted to the staff of the Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity in any particular case, where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Secretary-General.

5. The rights and entitlements referred to in paragraphs 1 (g) and 3 above shall be exercised in accordance with the formal requirements of the host country. These requirements, however, shall not affect the general principles laid down in this article.

Article XVI

Personnel recruited locally and assigned to hourly rates

Personnel recruited by the Tribunal locally and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Tribunal. Such immunity shall continue to be accorded after termination of employment with the Tribunal. They shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Tribunal. The terms and conditions of their employment shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

Article XVII

Persons performing missions for the Tribunal

1. Persons performing missions for the Tribunal shall enjoy the privileges, immunities and facilities under articles VI and VII of the General Convention, which are necessary for the independent exercise of their duties for the Tribunal.

2. The privileges and immunities are granted to persons performing missions for the Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity referred to in paragraph 1 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the President of the Tribunal.

Article XVIII

Witnesses and experts appearing before the Tribunal

1. The host country shall not exercise its criminal jurisdiction over witnesses and experts appearing from outside the host country on a summons or a request of the Tribunal, in respect of acts or convictions prior to their entry into the territory of the host country.

2. The immunity provided for in paragraph 1 above shall cease when the witness or expert having had, for a period of 15 consecutive days from the date when his or her presence is no longer required by the Tribunal or the Prosecutor, an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned, unless such return is on another summons or request of the Tribunal or the Prosecutor.

3. Witnesses and experts referred to in paragraph 1 above shall not be subjected by the host country to any measure which may affect the free and independent exercise of their functions for the Tribunal.

Article XIX

Counsel

1. The counsel of a suspect or an accused who has been admitted as such by the Tribunal shall not be subjected by the host country to any measure which may affect the free and independent exercise of his or her functions under the Statute.

2. In particular, the counsel shall, when holding a certificate that he or she has been admitted as a counsel by the Tribunal, be accorded:

(a) Exemption from immigration restrictions;

(b) Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

(c) Immunity from criminal, civil and administrative jurisdiction in respect of words spoken or written and acts performed by him or her in his or her official capacity as counsel. Such immunity shall continue to be accorded to him or her after termination of his or her functions as a counsel of a suspect or accused.

3. This article shall be without prejudice to such disciplinary rules as may be applicable to the counsel in accordance with the Rules of Procedure and Evidence adopted by the Tribunal.

4. The right and the duty to waive the immunity referred to in paragraph 2 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted shall lie with the Secretary-General.

Article XX

The suspect or accused

1. The host country shall not exercise its criminal jurisdiction over any person present in its territory, who is to be or has been transferred as a suspect or an accused to the premises of the Tribunal pursuant to a request or an order of the Tribunal, in respect of acts, omissions or convictions prior to their entry into the territory of the host country.

2. The immunity provided for in this article shall cease when the person, having been acquitted or otherwise released by the Tribunal and having had for a period of 15 consecutive days from the date of his or her release an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned.

Article XXI

Cooperation with the competent authorities

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host country. They also have a duty not to interfere in the internal affairs of the host country.

2. The Tribunal shall cooperate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

3. The Tribunal shall observe all security directives as agreed with the host country or as issued, in coordination with the United Nations Security Service, by the competent authorities responsible for security conditions within the penitentiary institution where the Tribunal area for detention is located, as well as all directives of the competent authorities responsible for fire prevention regulations.

Article XXII

Notification

1. The Registrar shall notify the Government of the names and categories of persons referred to in this Agreement, in particular the Judges, the Prosecutors, the staff of the Tribunal, persons performing missions for the Tribunal, counsel admitted by the Tribunal, witnesses and experts called to appear before the Tribunal or the Prosecutor, and of any change in their status.

2. The Registrar shall also notify the Government of the name and identity of each official of the Tribunal who is entitled to carry firearms on the premises

of the Tribunal, as well as the name, type, calibre and serial number of the arm or arms at his or her disposition.

Article XXIII

Entry into, exit from and movement within the host country

All persons referred to in articles XIV, XV, XVII, XVIII and XIX of this Agreement as notified as such by the Registrar to the Government shall have the right of unimpeded entry into, exit from and movement within the host country, as appropriate and for the purposes of the Tribunal. They shall be granted facilities for speedy travel. Visas, entry permits or licences, where required for official purposes of the Tribunal, shall be granted without charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses who have been notified as such by the Registrar to the Government.

Article XXIV

United Nations laissez-passer and certificate

1. The Government shall recognize and accept the United Nations laissez-passer as a valid travel document.

2. In accordance with the provisions of section 26 of the General Convention, the Government shall recognize and accept the United Nations certificate issued to persons travelling on the business of the Tribunal. The Government agrees to issue any required visas on such laissez-passer or certificates.

Article XXV

Identification cards

1. At the request of the Tribunal, the Government shall issue identification cards to persons referred to in articles XIV, XV, XVIII, XIX and XX of this Agreement certifying their status under this Agreement.

2. The Security Service of the Tribunal shall maintain photographic and other appropriate records of the suspect and accused persons referred to in article XX.

Article XXVI

Security, safety and protection of persons referred to in this Agreement

The competent authorities shall take effective and adequate action which may be required to ensure the appropriate security, safety and protection of

persons referred to in this Agreement, indispensable for the proper functioning of the Tribunal, free from interference of any kind.

Article XXVII

Social security and pension fund

1. The staff of the Tribunal are subject to the United Nations Staff Regulations and Rules and, if they have an appointment of six months' duration or more, become participants in the United Nations Pension Fund. Accordingly, such staff shall be exempt from all compulsory contributions to the social security organizations of the United Republic of Tanzania. Consequently, they shall not be covered against the risks described in the Tanzania social security regulations.

2. The provisions of paragraph 1 above shall apply mutatis mutandis to the members of the family forming part of the household of the persons referred to in paragraph 1 above, unless they are employed or self-employed in the host country or receive Tanzanian social security benefits.

Article XXVIII

Assistance in obtaining suitable accommodation

The Government of the United Republic of Tanzania shall assist persons referred to in articles XIV, XV, XVII, XVIII and XIX in obtaining suitable accommodation in the host country.

Article XXIX

Settlement of disputes

1. The Tribunal shall make provisions for appropriate modes of settlement of:

(a) Disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party;

(b) Disputes involving an official of the Tribunal who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

2. Any dispute between the Parties concerning the interpretation or application of this Agreement or the regulations of the Tribunal, which cannot be settled amicably, shall be submitted, at the request of either Party to the dispute, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the other Party may request the President of the International Court of Justice to make the

necessary appointment. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment. The Parties shall draw up a special agreement determining the subject of the dispute. Failing the conclusion of such an agreement within a period of two months from the date on which arbitration was requested, the dispute may be brought before the arbitral tribunal upon application of either Party. Unless the Parties decide otherwise, the arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes on the basis of the applicable rules of international law. In the absence of such rules, it shall decide ex aequo et bono. The decision shall be final and binding on the Parties to the dispute, even if rendered in default of one of the Parties.

Article XXX

Final provisions

1. The provisions of this Agreement shall be complementary to the provisions of the General Convention and the Vienna Convention, the latter Convention only insofar as it is relevant for the diplomatic privileges, immunities and facilities accorded to the appropriate categories of persons referred to in this Agreement. Insofar as any provision of this Agreement and any provisions of the General Convention and the Vienna Convention relate to the same subject matter, each of these provisions shall be applicable and neither shall limit the effect of the other.

2. This Agreement may be amended by mutual consent at any time at the request of either Party.

3. This Agreement shall cease to be in force if the seat of the Tribunal is removed from the territory of the host country or if the Tribunal is dissolved, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Tribunal at its seat in the host country and the disposition of its property therein, as well as provisions granting immunity from legal process of every kind in respect of words spoken or written or acts done in an official capacity, even after termination of employment with the Tribunal.

4. The provisions of this Agreement will be applied provisionally as from the date of signature.

5. This Agreement shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

DONE at New York on this 31st day of August nineteen hundred and ninety-five in duplicate, in the English language.

For the United Nations

(Signed) Mr. Hans CORELL
Under-Secretary-General
for Legal Affairs

For the Government of the
United Republic of Tanzania

(Signed) Daudi Ngelautwa MWAKAWAGO
Permanent Representative of the
Republic of Tanzania to the
United Nations

ATTACHMENT I

Letter dated 31 August 1995 from the United Nations Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the Permanent Representative of the United Republic of Tanzania to the United Nations

On the occasion of the signing of the Agreement between the United Nations and the Government of the United Republic of Tanzania concerning the Headquarters of the International Tribunal for Rwanda (hereinafter referred to as "the Agreement"), I would like to confirm the United Nations understanding regarding the interpretation and implementation of certain provisions of the Agreement.

In relation to article VII

It is the understanding of the Parties that without prejudice to the provisions of the Agreement, the United Nations shall prevent the seat of the Tribunal from becoming a refuge for persons who are avoiding arrest under any law of the United Republic of Tanzania or are required by the Government for extradition to another country or who are endeavouring to avoid service of legal process.

In relation to article XV

The provisions of paragraph 1 of article XV of the Agreement are based on the corresponding provisions of article V of the 1946 Convention on the Privileges and Immunities of the United Nations to which the United Republic of Tanzania has been a party without any reservation since 29 October 1962. In this connection, it should be recalled that pursuant to General Assembly resolution 76 (I) of 7 December 1946, the Assembly approved the granting of the privileges and immunities referred to in article V and VII of the Convention "to all members of the staff of the United Nations with the exception of those who are recruited locally and are assigned to hourly rates" (emphasis added). Thus, only locally recruited staff assigned to hourly rates are not entitled to the privileges and immunities under the Convention. Otherwise, the provisions of the resolution do not allow for any distinction among staff of the United Nations based on nationality or residence. Thus, in view of these provisions, it is the understanding of the United Nations that the staff of the Tribunal, which is a subsidiary organ of the Organization within the terms of Article 29 of the Charter of the United Nations, shall be accorded the privileges and immunities under article XV of the Agreement regardless of their nationality.

In relation to article XX

It is the understanding of the Parties that no sentence shall be served in the United Republic of Tanzania unless the Government has indicated its willingness to accept convicted persons in accordance with article 26 of the Statute.

In relation to article XXV

It is the understanding of the Parties that the issuance of identification cards shall be carried out at the expense of the Tribunal, which shall make the appropriate arrangements with the competent governmental authorities.

In relation to article XXVIII

It is the understanding of the Parties that the assistance furnished by the Government is limited to locating suitable accommodation.

I should be grateful if you could confirm that the above is also the understanding of your Government.

(Signed) Hans CORELL
Under-Secretary-General
for Legal Affairs
The Legal Counsel

ATTACHMENT II

Letter dated 31 August 1995 from the Permanent Representative of the United Republic of Tanzania to the United Nations addressed to the United Nations Under-Secretary-General for Legal Affairs, the Legal Counsel

I have the honour to acknowledge receipt of your letter of 31 August 1995, in which you set out the understanding of the United Nations regarding the interpretation and implementation of the provisions of articles VII, XV, XX, XXV and XXVIII of the Agreement between the United Nations and the Government of my country concerning the headquarters of the International Tribunal for Rwanda.

In accordance with your request, I wish to confirm, on behalf of my Government, that the understanding reflected in your above-mentioned letter corresponds to the views of my Government on the subject.

(Signed) Daudi N. MWAKAWAGO
Ambassador